

EXHIBIT “S-4”

1 COUNTY COURT OF THE STATE OF NEW YORK
2 COUNTY OF ONONDAGA : CRIMINAL TERM

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4 THE PEOPLE OF THE STATE OF NEW YORK,

5 Indict. No. 92-1114-1

6 vs.

7 CALENDAR PROCEEDING

8 HECTOR RIVAS,

9

10 Defendant.

11 -----

12 Onondaga County Criminal Court Bldg.
13 505 South State Street
14 Syracuse, New York 13202
15 March 18, 2016

16 **B e f o r e:**

17 HONORABLE THOMAS J. MILLER,

18 Judge

19 **A p p e a r a n c e s:**

20 WILLIAM J. FITZPATRICK, ESQ.
21 Onondaga County District Attorney
22 BY: ROBERT MORAN, ESQ.
23 Assistant District Attorney

24 EDWARD KLEIN, ESQ.
25 KIM ZIMMER, ESQ.
SIDNEY MANES, ESQ.
CASEY JOHNSON, ESQ.
Attorneys for the Defendant

1 THE CLERK: Hector Rivas.

2 MR. KLEIN: Hector isn't here because he
3 is hospitalized, Judge.

4 THE COURT: Yes. I heard that.

5 MR. KLEIN: If we can approach, I can tell
6 you about that. I don't want to do that on the
7 record.

8 THE COURT: Yes, please.

9 (Whereupon, a discussion was had at the
10 Bench)

11 THE COURT: Mr. Klein, Ms. Zimmer, Mr.
12 Manes.

13 I'm sorry, sir. We haven't met.

14 MR. JOHNSON: Casey Johnson.

15 THE COURT: Mr. Johnson. You each
16 represent Hector Rivas, is that true?

17 MR. KLEIN: Ms. Zimmer and I are assigned
18 by the court to represent Mr. Rivas. Mr. Manes
19 has represented him as counsel for years and
20 through his efforts overturned his conviction.
21 Mr. Johnson is an associate of Bousquet Holstein
22 where Mr. Manes is a partner.

23 THE COURT: Thank you for coming over.
24 Thank you.

25 Rob Moran appears on behalf of the

1 district attorney's office.

2 For reasons discussed here at the Bench,
3 Mr. Rivas is not present.

4 Mr. Moran, on Thursday of this week, I
5 believe, yesterday, you provided this court with
6 a copy of an order from the United States Court
7 of Appeals for the Second Circuit and you asked
8 that this matter be placed on the court's
9 calendar as soon as I was able. I'm in the
10 middle, as I indicated to you at the Bench, of a
11 non-jury trial, but if the People would like to
12 be heard and the defense as well, I'm certainly
13 here to listen. Go ahead.

14 MR. MORAN: Judge, one of the things I'm
15 concerned about, I think the court has a copy of
16 the submission made on Mr. Rivas's behalf by
17 Mr. Manes to the Second Circuit. It contains a
18 letter from Mr. Manes with a cover letter and
19 then a letter signed by Mr. Rivas. It's kind of
20 going through his version of the procedural
21 history of this case; and throughout it, he
22 complains about obstacles placed in the
23 petition's way impeding them from retrying this
24 case. On the one hand, I think Mr. Rivas is
25 complaining about the bail status, which I

1 understand he has every right to complain about,
2 I suppose, but I don't know that there aren't
3 other things that he's complaining about. I'm
4 not sure what that means. I would like some
5 clarification on what exactly I've done to impede
6 them from filing motions for a year. I simply
7 have my hands tied. There's nothing I can do,
8 except wait for motions. And up here in Syracuse
9 I'm waiting for motions and hearing that we need
10 more time, there's too much to go through, there
11 are other reasons why this can't get done.

12 THE COURT: Let me interrupt you,
13 Mr. Moran, because, as I said, I am involved in
14 this trial.

15 Mr. Klein, what obstacles have been placed
16 in your way by the People?

17 MR. KLEIN: The only obstacle -- Mr. Moran
18 has been cooperative throughout. As we have
19 needed things, I let him know. He's checked for
20 them. They either exist or don't exist. He
21 informs me of that. The obstacle is the nature
22 of the case. The obstacle is the history of the
23 case and the material that has to have been gone
24 through.

25 I want to note that Mr. Fitzpatrick,

1 during the trial when there was the Brady problem
2 that became an issue on appeal and the 440, the
3 late provision of material at the time of trial,
4 Mr. Fitzpatrick on the record said that he was
5 frustrated because every time a police officer
6 came over, they came over with new reports that
7 he had never seen. That has continued. There
8 are reports that Mr. Moran hasn't seen. There
9 are reports that we know are out there that
10 haven't been provided to Mr. Moran. We keep
11 coming across things and partly because the files
12 are paper files. I don't know what manner they
13 kept records in those days, but it wasn't
14 computerized, and so we continue to learn things
15 and get things. Also complicated by the fact
16 that we now have modern technology. We have DNA.
17 We have better laboratory procedures. So there
18 are tests that have been done. There are tests
19 that we're requesting be done. That all takes
20 time. And against that is the background of the
21 case. It was indicted in late November of 1992
22 and tried in March of 1993 by an attorney from
23 out of the area who lacked skills to try any
24 criminal case, let alone a homicide case, and who
25 had asked for an adjournment of that trial and

1 Judge Mulroy denied it. Even though at that
2 point he had asked for an adjournment, he had not
3 had his investigator come to Syracuse. His
4 investigator spent two days here in early March
5 with a trial of two weeks and saw maybe five
6 people and went back to New York City. That's
7 what -- you know, we're retrying a case that was
8 so screwed up in the beginning that it's taking
9 longer now to get it in shape to be tried.
10 Mr. Moran is not part of that and he's not being
11 an obstacle. The obstacle is the history of the
12 case, and I really think the Second Circuit is
13 taking another look at that because I don't think
14 they were aware of that when they issued a
15 mandate last spring. So maybe they're
16 re-thinking it, but it has nothing to do with you
17 or the court. You offered trial dates that were
18 speedy and would have allowed the case to be
19 tried, but it couldn't have been tried by any
20 competent defense team before now and we're
21 trying, as we talked about that, to have it ready
22 for June. And that is going to be difficult, but
23 we're committed to do that. But any competent
24 defense counsel team would be in the same
25 position where we are given the history of the

1 case and what has to be done.

2 THE COURT: Mr. Moran, anything else?

3 MR. MORAN: No, your Honor.

4 THE COURT: Mr. Klein, anything else?

5 MR. KLEIN: No, your Honor. Thank you.

6 THE COURT: Let me vent a little bit
7 today, please. You're right. We have attempted
8 to schedule this case for trial on many
9 occasions, and I've known most of you for a very
10 long time. I know you're all very competent
11 attorneys, and it will be a pleasure, if we ever
12 get to this stage, to have a trial with all of
13 you.

14 But having reviewed the submission of the
15 Second Circuit and now looking at their order
16 this morning, it's ironic, I would say, if not
17 disingenuous, to be complaining in correspondence
18 about the scheduling of this case for trial when
19 no motions have been filed by the defense.
20 Discovery issues, if they exist, don't prevent
21 filing some of these motions. I have none at
22 this point. I've attempted from the first
23 appearance date to give you a trial date, and
24 each time I've been told the defense isn't ready,
25 for whatever reason. The March trial date has

1 been moved yet again at the defense request now
2 to June. Initially you were given a December
3 trial date. I was told that was too soon. The
4 Second Circuit is free to do whatever they see is
5 justice, but I am at a complete loss as to what
6 I'm to do or what they would do if they were in
7 my shoes to move this case along. This trial is
8 scheduled now for June. If I have to be here by
9 myself with twelve jurors, then I'll be here by
10 myself. Don't come to me looking for any further
11 adjournments. I will not grant them. It is
12 intellectually inconsistent that on the one hand
13 the defendant, through Mr. Manes, is saying to
14 the Second Circuit I want my trial now, and on
15 the other hand Mr. Klein is telling me he's not
16 ready to go to trial and I need more time for
17 motions.

18 June 13th is our trial date. That's a
19 date certain whether this defendant is in or out
20 of custody. I will be here with a jury. I hope
21 you'll all join me. There are too many people
22 involved in this case, and, frankly, there are
23 too many courts involved in this case.

24 Mr. Langone told me he was not involved in
25 this case. However, the Second Circuit has

1 indicated their expectation he should be here
2 ready to try this case back on February 1st.
3 Frankly, as I indicated to you all at the Bench,
4 I don't get it.

5 June 13 trial date certain. Thank you.

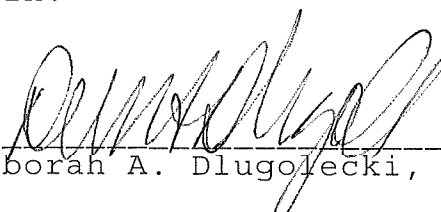
6 MR. KLEIN: Thank you, your Honor.

7 (Whereupon, the proceeding was adjourned)

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9 * * * *

10 C E R T I F I C A T E

11
12 This is to certify that I am a Senior Court
13 Reporter of the Fifth Judicial District; that I
14 attended and reported the above-entitled proceedings;
15 that I have compared the foregoing with my original
16 minutes taken therein, and that it is a true and
17 correct transcript thereof and all of the proceedings
18 had therein.

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21 Deborah A. Dlugolecki, C.M.
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DEBORAH A. DLUGOLECKI, C.M.

Senior Court Reporter

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